

<p align="center"><b>STATE OF MONTANA</b>  <b>COMPLIANCE SUPPLEMENT FOR AUDITS OF</b>  <b>LOCAL GOVERNMENT ENTITIES</b></p>	REF: L&I-1
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<b>PROGRAM/SUBJECT:     Building Code Enforcement Program</b>	

**TYPES OF RECIPIENTS:**

Counties, cities and towns with code enforcement programs certified by:  
Montana Department of Labor and Industry,  
Business Standards Division,  
Building Codes Bureau  
**(Note: The certified entities do not receive funds from the Department of Labor and Industry but are authorized to charge fees. See below.)**

**SOURCE OF AUTHORIZATION AND REGULATIONS:**

Title 50, Chapter 60, Parts 1 – 3, of the MCA  
ARM 24.301.201 through 24.301.231

**INFORMATION CONTACT:**

Montana Department of Labor and Industry,  
Business Standards Division,  
Building Codes Bureau  
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**I. PROGRAM OBJECTIVES:**

The objectives of the State building code program, as set out in Section 50-60-201, MCA, are to:

- (1) provide reasonably uniform standards and requirements for construction and construction materials consistent with accepted standards of design, engineering, and fire prevention practices;
- (2) permit to the fullest extent feasible the use of modern technical methods, devices, and improvements that tend to reduce the cost of construction consistent with reasonable requirements for the health and safety of the occupants or users of buildings and, consistent with the conservation of energy, by design requirements and criteria that will result in the efficient use of energy, whether used directly or in a refined form, in buildings;
- (3) eliminate restrictive, obsolete, conflicting, and unnecessary building regulations and requirements that tend to unnecessarily increase construction costs, unnecessarily prevent the use of proven new materials that have been found adequate through experience or testing, or provide unwarranted preferential treatment to types or classes of materials, products, or methods of construction;

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**I.     PROGRAM OBJECTIVES – continued:**

- (4) ensure that any newly constructed public buildings and certain altered public buildings are readily accessible to and usable by persons with disabilities, according to the principles applicable to accessibility to public buildings for persons with disabilities in the state building code;
- (5) ensure statewide uniformity in the inspection and enforcement of exterior features of all newly constructed public buildings and certain altered public buildings, including building sites, for physical accessibility to people with disabilities;
- (6) encourage efficiencies of design and insulation that enable buildings to be heated in the winter with the least possible quantities of energy and to be kept cool in the summer without air conditioning equipment or with the least possible use of the equipment;
- (7) encourage efficiencies and criteria directed toward design of building envelopes with high thermal resistance and low air leakage and toward requiring practices in the design and selection of mechanical, electrical, and illumination systems that promote the efficient use of energy.
- (8) provide, to the greatest extent possible, with the advice and consent of the building codes council and the publishing authorities for currently adopted building codes, a broadly uniform system of building code interpretations for the purposes of predictability, fairness, and efficiency.

**(Note: Counties, cities and towns may not enforce building codes unless their code enforcement program has been certified, in writing, by the Montana Department of Labor and Industry, Building Codes Bureau.)**

**II.    PROGRAM PROCEDURES:**

Counties, cities and towns wishing to adopt and enforce building codes within their jurisdictional areas must apply for and receive the approval of the Montana Department of Labor and Industry, Building Codes Bureau.

A county, city or town may not enforce a building code unless:

- (a) the code enforcement program has been certified by the Building Codes Bureau as in compliance with applicable statutes and department certification rules;
- (b) the current adopted code (adopted by ordinance or administrative action), a current list of fees to be imposed, and a current plan for code enforcement , and staff qualifications have been filed with and approved by the Building Codes Bureau; and
- (c) any building code enforcement staff providing inspections, plan review or code interpretations must be licensed or certified as per ARM 24.301.206. (Section 50-60-302(1), MCA)

As provided in Section 50-60-302(2), MCA, the Department of Labor and Industry has adopted administrative rules governing the certification of county, city and town building code enforcement programs. These rules, which can be found in Title 24, Chapter 301,

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## II.     **PROGRAM PROCEDURES - continued:**

Sub-Chapter 2 of the Administrative Rules of Montana (ARM), include provisions for prompt revocation of certification for refusal or failure to comply with any applicable statute or rule. The Building Codes Bureau may allow a county, city or town a reasonable amount of time, not to exceed 6 months, to correct identified code enforcement program deficiencies, unless the deficiencies constitute an immediate threat to the public health, safety, or welfare, in which case the department may require immediate correction. Failure to correct deficiencies within the time set by the Building Codes Bureau constitutes a basis for immediate decertification of the code enforcement program. Continued operation of a county, city or town code enforcement program in violation of a Building Codes Bureau order to correct deficiencies may be enjoined or subject to a writ of mandamus by a judge of the district court in the jurisdiction in which the county, city or town is located. These rules also include provisions for the Building Codes Bureau to ensure that all code enforcement program functions are being properly performed.

A city or town may enforce its building code only within the incorporated limits of the city or town. A county may adopt a building code under this chapter on a countywide basis unless a city or town within the county has adopted a building code. If a city or town within the county has adopted a building code, then the county may not enforce the county building code in that city or town. A county, city or town may contract for inspections and/or plan review services, but must provide copies of such contracts to the Building Codes Bureau for approval prior to the contractual services being provided. (NOTE: A county, city or town cannot contract for the entire program to be serviced by and managed by another entity. The administrative services should be maintained by the certified jurisdiction, not a contracted source.). (Section 50-60-304, MCA, ARM 24.301.231)

## III.    **COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

### 1.     **Compliance Requirements:**

- **Beginning on September 1, 2004**, and continuing thereafter on a three year rotating basis, counties, cities and towns shall submit annual reports which provide detailed answers to each of the criteria listed below (items a. through k.), even if there has been no change since the previous reporting period, as follows:
  - a. beginning in September 2004, counties, cities and towns whose names begin with the letters A through H;
  - b. beginning in September 2005, counties, cities and towns whose names begin with the letters I through P; and
  - c. beginning in September 2006, counties, cities and towns whose names begin with the letters Q through Z.
 (ARM 24.301.207(4))

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### III. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

#### 1. Compliance Requirements - continued:

- The annual report required to be submitted every three years should contain all of the following information:  
**(Note: Each item below should be answered and tabbed separately from all other annual report information.)**
  - a. an official map or certified legal description of the jurisdictional area;
  - b. a list of building-related codes being enforced, including edition dates;
  - c. copies of ordinances which adopt each building-related code or each administrative order used to adopt each building-related code if not previously provided in accordance with ARM 24.301.202;
  - d. a list of the type of structures subject to and a list of the type of structures exempted from the building related codes;
  - e. a schedule of fees charged for permits;
  - f. an accounting of the collection and expenditure of fees and charges for the immediately preceding fiscal year;
  - g. a copy of the ordinance establishing the appeal procedure or the acknowledgment that the International Building Code appeals procedure will be followed;
  - h. a list of members of the appeals board and their qualifications;
  - i. the current plan of enforcement:
    - (i) a general description of how permits are applied for and issued;
    - (ii) how plan reviews are conducted;
    - (iii) how and when inspections are made;
    - (iv) how final approvals or certificates of occupancy are issued; and
    - (v) how factory-built buildings and manufactured homes are permitted and inspected;
  - j. a list of employees inspecting, reviewing plans or approving any installation with descriptions of responsibilities and qualification status of each employee as provided in the ARM 24.301.206; and
  - k. if any services relating to building code enforcement are provided through contractual arrangements, a current copy of any and all such contracts.

(ARM 24.301.207(3))
- State law and the Building Code Bureau's ARMs state that a local government *may* submit an annual report at other times other than as required above, and that the Building Codes Bureau *may* request a local government with a certified code enforcement program which has not filed an annual report to respond to inquiries regarding its code enforcement program so the Bureau can ensure program functions are being properly performed as required by 50-60-302(2), MCA. The Building Codes Bureau's practice is to always request an annual report, whether the required complete three-year report, or an interim report. Interim reports are required to include the following information:

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### III. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

#### 1. Compliance Requirements - continued:

- a. an official map or certified legal description of the jurisdictional area, **if** the jurisdictional area has changed during the fiscal year and the changes have not already been reported to the Bureau;
  - b. a list of building-related codes being enforced, including edition dates;
  - c. **if** there were any changes in codes or applicable ARMS's being enforced, a complete copy of the adopting ordinance or administrative action;
  - d. an accounting of the collection and expenditures of fees and charges for the immediately preceding fiscal year (including supporting documentation of reserve balances);
  - e. a list of employees inspecting, reviewing plans or approving any installation with descriptions of responsibilities and qualification status of each employee (including current copies of certification/licensure documents); and
  - f. a copy of any contractual agreement to provide services to the building code enforcement program, **if** a current one is not already on file.
- Annual reports shall be filed with the Building Codes Bureau on or before September 1 of each year for the immediately preceding fiscal year. (ARM 24.301.207(1)& (2))

#### Suggested Audit Procedures:

- Review the entity's annual report submitted to the Building Codes Bureau, and verify that the information provided is supported by documentation maintained by the entity's building code enforcement program.
- Through inquiry and review of files, determine whether the entity was required to respond to inquiries from the Building Codes Bureau. If so, review the entity's response and verify that the information provided is supported by documentation maintained by the entity's building code enforcement program.

#### 2. Compliance Requirements:

- Each county, city or town certified under Section 50-60-302, MCA, shall, within its jurisdictional area, ensure that all construction-related fees or charges imposed and collected by the municipality or county are necessary, reasonable, and uniform and are:
  - a. except as provided in c. below, used only for building code enforcement, which consists of those necessary and reasonable costs directly and specifically identifiable to the enforcement of building codes, plus indirect costs charged on the same basis as other local government proprietary funds not paying administrative charges as direct charges. If indirect costs are waived for any local government proprietary fund, they must also be waived for the building codes

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### III. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

#### 2. Compliance Requirements - continued:

enforcement program. Indirect charges are limited to the charges that are allowed under federal cost accounting principles that are applicable to a local government. **(Note: Permit fees are not to be used to support fire departments, planning, zoning or other activities, except to the extent that employees in those programs provide direct plan review, inspection or other building code enforcement services for the building code enforcement program. (ARM 24.301.203(2)))**

- b. reduced if the amount of the fees or charges accumulates above the amount needed to enforce building codes for 12 months. The excess must be placed in a reserve account and may only be used for building code enforcement. Collection and expenditure of fees and charges must be fully documented. **(Note: The “reserve account” referenced here represents the ending equity of the fund in which the entity accounts for its building code enforcement program.)**
  - c. allocated and remitted to the Building Codes Bureau, in an amount not to exceed 0.5% of the building fees or charges collected, for the building codes education program. (See Compliance Requirement No. 3 below)  
(Section 50-60-106(2)(g), MCA; ARM 24.301.203)
- The local government must maintain a system and adequate records to:
    - a. document that permit fees are used only for those costs related to building code enforcement activities, as defined above;
    - b. document the amount by which revenues from permit fees differs from the costs related to building code enforcement activities each year;
    - c. document the amount maintained as a reserve and the percentage of the costs of building code enforcement activities that the reserve represents;
    - d. document that any reserve is utilized only for the cost of building code enforcement activities’ and
    - e. document that permit fees were reduced as required in the event the reserve exceeds the maximum reserve allowed, as discussed above.
 (ARM 24.301.203(4))

#### Suggested Audit Procedures:

- Test revenue from permit fees and determine that permit fees charged are in accordance with the permit fee schedule as established by the local government and as filed with and approved by the Building Codes Bureau.
- Review and test the local government’s system and records as necessary to ensure that permit fees are only used for building code enforcement, as defined in Section 50-60-106, MCA, and above.

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### III. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES

#### **Suggested Audit Procedures - continued:**

- If indirect costs are charged to the building code enforcement program and paid with permit fees:
  - a. determine that the indirect costs are charged on the same basis as other local government proprietary funds not paying administrative charges as direct charges;
  - b. determine that indirect costs have not been waived for any local government proprietary fund (if so, they must also be waived for the building code enforcement program); and
  - c. determine that indirect charges are limited to the charges that are allowed under federal cost accounting principles that are applicable to a local government (OMB Circular A-87).
- Determine that permit fees are reduced if the amount of the fees or charges accumulates above the amount needed to enforce building codes for 12 months.

#### **3. Compliance Requirement:**

- Local government programs certified for the enforcement of building codes shall remit to the Department of Labor and Industry 0.5% of building fees or charges collected for the building codes education fund.
  - a. Local governments with annual revenues from building fees and charges of **\$100,000 or more** shall make the payment in two semi-annual installments, the first half on or before February 1, for revenues collected between the preceding July 1 and December 31, and the second half on or before September 1 for revenues collected between the preceding January 1 and June 30.
  - b. Local governments with annual revenues from building fees and charges of **less than \$100,000** may make one annual payment on or before September 1 for revenues collected between the preceding July 1 and June 30. (ARM 24.301.211)

#### **Suggested Audit Procedure:**

- Determine the total amount of annual revenues from building fees and charges. Verify that the payment remitted to the State by the local government was equal to 0.5% of this total revenue amount. Verify also that the local government remitted the payments to the State within the due dates discussed above.

#### **4. Compliance Requirement:**

- A local government with a certified code enforcement program shall notify the Department of Labor & Industry, Building Codes Bureau, within 10 days whenever any of the following events occur:
  - a. where a code enforcement program provides any part of its services in accordance with or through contractual arrangements, any material changes in such contracts,

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### III. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES

#### 4. **Compliance Requirements - continued:**

- including but not limited to breach, reformation, rescission, or modification must be reported; or
  - b. when building officials or supervisory personnel are no longer employed in those capacities within the certified code enforcement programs.
- (ARM 24.301.209)

#### **Suggested Audit Procedure:**

- Through inquiry and review of records, verify that the local government notified the Department of Labor & Industry, Building Codes Bureau, if either of the events discussed above occurred during the audit period.

#### 5. **Compliance Requirements:**

- A local government with a certified building code enforcement program\* shall require its independent auditor, in conjunction with the audit required by Section 2-7-503, MCA, to perform agreed-upon procedures to determine whether the local government has complied with the financial related statutes and administrative rules relating to local building code enforcement programs. The agreed-upon procedures engagement must be performed and reported in accordance with standards prescribed by the American Institute of Certified Public Accountants.

**(\*Note: This agreed-upon procedures engagement is required of only those governments that had a building code program reserve fund balance in the preceding fiscal year in excess of \$10,000 and had building permit revenues in the previous fiscal year of more than \$10,000. The Department of Labor and Industry may require local governments which do not meet this criteria to provide such an agreed-upon procedures on a case-by-case basis.)**

(ARM 24.301.208(1))

- The agreed-upon procedures engagement must include, but is not limited to, procedures necessary to determine that all construction-related fees or charges imposed and collected by the local building code enforcement program are used and accounted for as provided in 50-60-106(2), MCA and ARM 24.301.203, as follows:
  - a. except as provided in “i”, below, all construction-related fees or charges imposed and collected by the local building code enforcement program are used only for the building code enforcement program, which consists of necessary and reasonable costs directly and specifically identifiable for the enforcement of building codes;
  - b. indirect costs are charged on the same basis as other local government proprietary funds not paying administrative charges as direct charges;
  - c. if indirect costs are waived for any other local government proprietary fund, those indirect costs are waived for the local building code enforcement program;



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### III. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES

#### 5. Compliance Requirements - continued:

- d. indirect charges are limited to the charges that are allowed under federal cost accounting principles applicable to a local government;
- e. the collection and expenditure of all fees and charges are fully documented;
- f. fees and charges are reduced if the amount accumulates above the amount needed to enforce building codes for 12 months;
- g. excess fee and charge accumulations are placed in a reserve account and used only for the local building code enforcement program;
- h. the reserve account may not exceed the amount needed to support the building code enforcement program for 12 months;
- i. allocated and remitted to the Department, in an amount not to exceed 0.5% of the building fees or charges collected, for the building codes education program established in Section 50-60-116, MCA, and
- j. verify that the local government maintains a system and adequate records to document the above items.

**(NOTE to Auditor: Please contact the Building Codes Bureau for the most current Agreed-Upon Procedures and for an illustrative copy of the Agreed-Upon Procedures Report format.)**

- The cost of the agreed-upon procedures engagement shall be paid by the local government, but may be considered a direct cost of the code enforcement program. (ARM 24.301.208(2))
- Copies of the report on applying agreed-upon procedures shall be filed with both the Department of Labor and Industry and the Local Government Services Bureau of the Department of Administration. (ARM 24.301.208(3))

#### Suggested Audit Procedures:

- Determine if the local government had a building code program reserve fund balance in the preceding fiscal year in excess of \$10,000 and had building permit revenues in the previous fiscal year of more than \$10,000. If so, enter into a contract or agreement with the local government to perform the engagement. The fee for the separate engagement should be agreed to and specified in writing.
- Establish a clear understanding with the local government regarding the terms of the engagement, preferably in an engagement letter. The auditor must perform at least those procedures specified in the Administrative Rules. Determine that the agreed-upon procedures report includes the procedures, and is in the format, required by the Department of Labor and Industry, Building Codes Bureau.

**(NOTE to Auditor: Please contact the Building Codes Bureau for the most current Agreed-Upon Procedures and for an illustrative copy of the Agreed-Upon Procedures Report format.)**

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### III.     COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES

#### **Suggested Audit Procedures - continued:**

- Perform the agreed-upon procedures engagement in accordance with applicable standards adopted by the American Institute of Certified Public Accountants.
- Prepare the required accountant's report on applying agreed-upon procedures in accordance with applicable standards adopted by the American Institute of Certified Public Accountants.
- Issue the accountant's report on applying agreed-upon procedures to the local government; to the Department of Labor and Industry, Building Codes Bureau; and to the Local Government Services Bureau of the Montana Department of Administration.
- Consider whether any findings resulting from performing the agreed-upon procedures should also be included in the audit report as well as the accountant's report on applying agreed-upon procedures.